IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2882 OF 2006

IN

CRIMINAL APPEAL NO. 665 OF 2006

The State of Maharashtra .. Appellant.

vs.

Shankar Genu Karade

& Ors. .. Respondents.

Mr. K.V. Saste, A.P.P. for the State.
Mr. R.S. Kate for Respondent Nos. 1, 6, 7 & 13.

Coram: J.N. PATEL &,
R.S. MOHITE, JJ.
Date: 18th January, 2007.

P.C.

. This is an application filed by the State for grant of leave to appeal against the judgment and order passed by the IInd Ad-Hoc Additional Sessions Judge, Satara dated 31.3.2006 in Sessions Case No. 171/2004. By the impugned judgment and order the trial Court has acquitted accused nos. 1, 2, 6, 7, 9, 10, 12, 14 and 19 of the charge under section 143, 147, 148, 307, 323, 504 and 506 read with 149 IPC.

2. In brief, the prosecution case was that the informant Dada Karade along with his mother Laxmibai, wife Shobha and children were residing at Karadewadi, Taluka Khandala. Dada Karade owned land bearing Gat No. 148. That on 15.6.2004 at 7.00 p.m. when Dada Karade was present at his house, accused no. 3,Dada,
accused no. 8 Atmaram, accused no. 5 Soma and accused no. 13 Balu returned with their family members and sheep. The sheep were put in the pound of the informant
located in Gat No. 148 and, therefore, the informant Dada along with three other persons by name Gopinath, Bapu and Dilip went there to accost the accused persons. On being accosted, the accused persons abused the informer. Accused no. 5 gave two blows of axe on the informant, accused no. 3 Dada also gave an axe blow to Dilip. Accused no. 8 Atmaram gave an axe blow on the head of Balu.

3. The trial Court on consideration of evidence led by the prosecution convicted accused nos. 3, 4, 5, 8, 11 and 13 on the footing that specific overt acts were alleged against them by the two injured eye witnesses who were examined. These accused were convicted for offence under section 302 read with 149 IPC and other offences. As against the acquitted accused being accused nos. 1, 2, 3, 7, 9, 10, 12, 14

and 19 on considering the evidence of the two injured eye witnesses i.e. PW-6 Dada Karade and PW-8 Balu Karade, the trial Court concluded that these two eye witnesses had not indicated in their evidence that the acquitted accused were present from the very beginning of the assault. The evidence of these two witnesses did not indicate as to how and when these persons arrived there. It was contended by the prosecution that the evidence of PW-6 and PW-8 did indicate that the acquitted accused had assaulted some of the witnesses. He however concedes that none of the witnesses stated to have been assaulted by the accused persons were examined by the prosecution. Admittedly, there is no oral or other evidence to implicate the acquitted accused.

4. In our view, the trial court has correctly analysed the evidence and has taken a view which cannot be said to be perverse. The view taken by the trial court is a plausible view and hence, leave is refused. Consequently, the appeal to stand dismissed.

(J.N. Patel, J.)

(R.S. Mohite, J.)